

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-683V

UNPUBLISHED

DOROTHY HARPER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 14, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Septic
Arthritis

Renee J. Gentry, The Law Office of Renee J. Gentry, Washington, DC, for Petitioner.

Emily H. Manoso, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 12, 2021, Dorothy Harper filed a petition² for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*³ (the “Vaccine Act”). Petitioner alleges that she suffered right shoulder/arm pain, including septic arthritis. Amended Petition at 1, 6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 17, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for septic arthritis. On April 13, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$125,000.00 in actual and projected pain and suffering. Proffer at 2. In the Proffer,

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² Petitioner filed an Amended Petition on November 16, 2022. ECF No. 36

³ National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$125,000.00 in actual and projected pain and suffering in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DOROTHY HARPER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-683V

Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On January 12, 2021, Dorothy Harper (“petitioner”) timely filed a Petition for Compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”). 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleges that she received an influenza (“flu”) vaccination on January 3, 2020, and thereafter suffered a shoulder injury related to vaccine administration (“SIRVA”) which “manifested as bursitis as well a[s] a right rotator cuff tear, and other significant damage to her shoulder prior to her infection.” Petition at 5. On November 3, 2022, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report denying that compensation was appropriate for SIRVA, but indicating that petitioner had suffered from septic arthritis that was appropriate for compensation under the terms of the Act. ECF No. 33. An Amended Petition was filed on November 16, 2022, alleging that petitioner “experienced septic arthritis and related sequela from her January 3, 2020 influenza vaccination.” Amended Petition at 5. On November 17, 2022, the Chief Special Master subsequently issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 37.

I. Items of Compensation

Respondent proffers that petitioner should be awarded \$125,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$125,000.00, representing compensation for all elements of economic and noneconomic damages, in the form of a check payable to petitioner, Dorothy Harper.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Dorothy Harper:	\$125,000.00
---	---------------------

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Emily H. Manoso
EMILY H. MANOSO
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Ben Franklin Station
Washington, DC 20044-0146
Email: Emily.H.Manoso@usdoj.gov
Tel: (202) 305-3912

Dated: April 13, 2023